

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M No. 23436 of 2014

DATE OF DECISION :- March 20, 2018

Jasvir Kaur @ Jasbir Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Amit Gupta, Advocate for the petitioner.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

By way of filing the present petition under Section 482 Cr.P.C. petitioner Jasvir Kaur @ Jasbir Kaur seeks quashing of order dated 22.5.2014 passed by Additional Sessions Judge, Jalandhar vide which she has been summoned as an additional accused while allowing application under Sections 319 Cr.P.C. in case F.I.R. No. 78 dated 4.7.2013 under Section 323, 324, 452, 148, 149 IPC and later on added Sections 308, 326 IPC registered with Police Station Kartarpur, District Jalandhar City.

Briefly stated the facts of the case as per prosecution story are that on 4.7.2013 at about 6.30 A.M. complainant Hardip Singh son of Hardev Singh resident of Mallian, P.S. Kartarpur, District Jalandhar, aged about 25 years was going to his fields on his tractor. Manvir Singh son of Joga Singh resident of that very village was also coming on tractor and on observing the complainant, Manvir Singh stopped the tractor and started abusing him. The complainant also responded to such abuses. Thereafter he returned home. At about 7.45 A.M. on the same day when the complainant parked his tractor in the street near the gate of his house, then Joga Singh armed with an iron rod,

Jasvir Kaur (present petitioner) armed with a datar, Manvir Singh empty

handed, Palwinder Kaur empty handed, Balbir empty handed, Gurmel Singh son of Darshan Singh having an iron rod, Gurmel Singh @ Totti son of Sohan Singh having an iron rod, Avtar Singh son of Gurmel Singh empty handed, all residents of that very village, raising lalkaras (exhortations) rushed towards the complainant, who got terrified and went inside his house. Then all the miscreants entered the house of complainant. On a lalkara being raised by Joga Singh that complainant should be caught and taught a lesson for not casting vote, Avtar Singh caught hold of the complainant from his arms whereas Gurmail Singh @ Totti gave an iron rod blow to the complainant hitting him on backside of his head. When mother of the complainant namely Kulwinder Kaur and his brother Harjit Singh came forward to rescue the complainant then Palwinder Kaur caught hold of Kulwinder Kaur from her hair and Jasvir Kaur gave two datar blows to Kulwinder Kaur hitting her on the little finger of her left hand and on right hand palm and on her shoulder. Manvir Singh caught hold of Harjit Singh from arms and Joga Singh gave iron rod blow hitting Harjit Singh on the right and left side. Then Gurmel Singh @ Mukhi gave iron rod blow to Harjit Singh hitting him on the left shoulder. Harjit Singh fell down. Then Balbir Singh gave two stick blows to Harjit Singh. On hearing noises several other persons came to the spot.

Then the assailants ran away along with their respective weapons. The injured were taken to Civil Hospital, Kartarpur, where complainant and his mother Kulwinder Kaur were admitted, whereas since condition of Harjit Singh was serious, he was referred to a hospital at Jalandhar by the doctor. The motive for the incident was that complainant party had not voted for the accused during Panchayat elections.

Formal F.I.R. was registered on the basis of statement of complainant Hardip Singh which he made to the police. The matter was

investigated. The challan against all the accused except Jasbir Kaur was prepared and filed in the Court. The name of Jasbir Kaur was kept in column no. 2. when challan was presented. After completion of usual formalities the case was committed to the Court Sessions and from there it was assigned to Additional Sessions Judge, Jalandhar who framed formal charge for offences under Sections 148, 308, 323 read with Section 149 IPC against accused Gurmail Singh son of Sohan Singh, Palwinder Kaur, Balbir Singh, Manvir Singh, Avtar Singh, Joga Singh and Gurmail Singh. All the accused pleaded not guilty and claimed trial.

During the course of prosecution evidence, prosecution had examined Hardeep Singh as PW1, who supported the prosecution case on material aspects testifying that Jasbir Kaur gave two datar blows on the person of Kulwinder Kaur hitting her on little finger of left hand and left shoulder. Thereafter an application under Section 319 Cr.P.C. for summoning of Jasbir Kaur as an additional accused was filed which was allowed by the trial Court with the following observations :-

“In the instant case, there is sufficient evidence on record showing the involvement of accused Jasbir Kaur wife of Gurmail Singh, in the occurrence.”

Accordingly, the application was accepted and Jasbir Kaur was ordered to be summoned as an additional accused vide impugned order.

Feeling aggrieved, the petitioner has approached this Court by way of filing the present petition, notice of which was given to the State.

I have heard learned counsel for the petitioner and learned State counsel besides going the record.

Learned counsel for the petitioner has contended that the genesis of the occurrence was that daughter of petitioner had been teased by the accused and instead of feeling sorry for such conduct, they attacked sons of

petitioner namely Manraj Singh and Manvir Singh, who had suffered grievous injuries and were hospitalized. The petitioner was not present at the spot at the relevant time and has been involved only as a pressure tactics. She was found innocent by the police during the enquiry and no fresh evidence has appeared on record but even then the trial Court in a mechanical manner and without due application of mind has summoned the accused. He has further argued that evidence on the record is not of that quality and type relying upon which the petitioner could be summoned as an additional accused.

In support of his contentions, learned counsel for the petitioner has relied upon judgment by a Constitution Bench of Hon'ble Supreme Court in ***Hardeep Singh v. state of Punjab and others 2014(1) R.C.R. (Criminal) 623*** where this issue was discussed at length, whereas dealing with Question No. IV as to what is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to array an accused and whether the power under Section 319(1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted. The question was answered as under :-

“Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial-therefore the degree of satisfaction for summoning the accused (original and

subsequent) has to be different.”

A perusal of the impugned order goes to show that the trial Court has not taken into consideration the settled law on the subject. The application under Section 319 Cr.P.C. seems to have been allowed in a mechanical manner without considering the material on record against Jasvir Kaur @ Jasbir Kaur warranting her summoning as an additional accused. The trial Court has not properly considered the fact that as a result of investigation the police had not challaned Jasvir Kaur @ Jasbir Kaur and was rather found to be innocent. Though complainant had named her as an accused in the F.I.R. but then some further material ought to have been there considering which summoning of Jasvir Kaur @ Jasbir Kaur was justified. Merely by observing that there is sufficient evidence on record showing involvement of accused Jasvir Kaur @ Jasbir Kaur in the occurrence, the legal parameters laid down for summoning of additional accused under Section 319 Cr.P.C. are not met.

Therefore, the impugned order is not sustainable. Accordingly, the same is set aside by way of acceptance of the petition in hand.

(H.S. MADAAN)
JUDGE

March 20, 2018
p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No